IN THE

Supreme Court of the United States

October Term, 1960

No. 166

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & CO., a co-partnership,
Respondents

v.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, AND MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,
Petitioners

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

TABLE OF AUTHORITIES—*Continued*

Cases: Page

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Marine Engineers Beneficial Association, Charles LaPorte, Fred L. Beatty, John Doe, Richard Roe, and Marine Engineers Beneficial Association, Local 101, pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Minnesota in this case.

OPINION BELOW

The Opinion of the District Court of St. Louis County, State of Minnesota (R. 33-46) is unreported. The Opinion of the Supreme Court of Minnesota is reported at 108 N. W. 2d 627 (1961).

JURISDICTION

The Decree of the Supreme Court of Minnesota was entered on March 30, 1961 (Appendix 13-29). The jurisdiction of this Court is conferred by 28 U. S. C. 1257.

QUESTION PRESENTED

May a state court enjoin activity clearly within the prohibitions of Section 8 of the National Labor Relations Act and therefore within the exclusive jurisdiction of the National Labor Relations Board?

STATUTORY PROVISIONS INVOLVED

Labor Management Relations Act of 1947, 61 Stat. 136, et seq., 29 U. S. C. 152, 158, Sections 2(5), 2(11), 8(b)(2), 8(a)(3), 8(b)(4), (Appendix 30-32).

STATEMENT OF THE CASE

The plaintiffs-respondents in this case are Interlake Steamship Company and Pickands-Mather Company. They are the owners and operators of thirty-two bulk cargo ships on the Great Lakes, transporting iron ore, coal, stone and grain between numerous Great Lakes ports in the United States and Canada (R. 8, 9, 21, 57).

The defendant, the petitioner herein, is Marine Engineers Beneficial Association and its Local 101, referred to hereinafter as MEBA. It is a voluntary unincorporated association which represents and collectively bargains for the licensed engineers on approximately ninety-five per cent of all of the merchant vessels in the United States fleet and approximately thirty-five to forty per cent of the merchant fleet on the Great Lakes (R. 264). The MEBA did not

have a collective bargaining agreement with either of the respondents (R. 192), although it claimed some of their engineers as members (R. 268).

On November 11, 1959, the *Samuel Mather*, a vessel owned by the respondent Interlake, docked at the Carnegie Dock & Fuel Company in Duluth, Minnesota, to unload a cargo of coal. Shortly after it berthed, the MEBA began picketing at the entrance to the Carnegie dock (R. 22, 58), and the Carnegie employees refused to proceed with the unloading of the vessel (R. 22). The picket signs read as follows:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> "MEBA LOC. 101 AFL-CIO. REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 22, 58).

On the night of November 12, 1959, four or five pickets carrying signs bearing the same legends appeared at the entrance to the Duluth plant of the Interlake Iron Corporation (R. 23, 24, 59, 60). At that time there was no dispute between Interlake and its employees, none of whom was on the picket line.

The picketing was at all times peaceful (R. 27, 63, 145).

A temporary restraining order prohibiting the picketing was issued on November 12, 1959, by the District Court of St. Louis County. A hearing was held on November 18, 1959, after which a temporary injunction was granted. A permanent injunction was ordered on March 28, 1960, and affirmed by the Minnesota Supreme Court on March 30, 1961.

At all stages in these proceedings MEBA took the

position that the state courts should deny the requested injunction for two reasons: (1) that the state courts lacked jurisdiction over the subject matter of this action because it involved activities within the scope of the National Labor Relations Act as amended, and within the exclusive jurisdiction of the National Labor Relations Board (R. 19, 34, 62, 290), and (2) aside from the jurisdictional question, the injunction should be denied on its merits.

Both the trial court and the state Supreme Court ruled against MEBA on both grounds: (1) in their opinion MEBA members were supervisory employees who were expressly excluded from the coverage of the federal statute and not within the jurisdiction of the NLRB (R. 28, 62, 64; Appendix 15-19), and (2) the purpose of the picketing was to compel an employer to coerce its employees to join the Union in violation of state law, and thus the picketing became unlawful and enjoinable.

REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of Minnesota is in plain derogation of this Court's pronouncements with regard to the preemption of the jurisdiction of state (and federal) courts by the authority vested in the National Labor Relations Board.

Examination of recent decisions of this Court reveals the following pertinent guiding principles with regard to this matter:

(1) A state may not enjoin peaceful picketing whose object has been made an unfair labor practice under Section 8 of the federal Labor Management Relations Act, which invests the National Labor Relations Board with the exclusive power to pass on such conduct. *Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776 (AFL)*, 346 U. S. 485 (1953).

(2) Even if an unfair labor practice is not clearly involved in such peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468, 481 (1955).

(3) "When an activity is arguably subject to . . . §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the NLRB if the danger of state interference with national policy is to be averted." *San Diego Building Trades Council vs. Garmon*, 359 U. S. 236, 245 (1959).

Applying these criteria to the facts found by the trial court and adopted by the state Supreme Court, we can only conclude that the activity of the petitioner MEBA was at the very least "arguably subject to" two subsections of Section 8(b) of the Labor-Management Relations Act of 1947.[1] The trial court found as a fact, and the Supreme Court specifically adopted its finding, that

> "16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.
>
> "17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the

[1] Since the picketing occurred on November 12, 1959, the 1959 amendments to this statute, which took effect on November 14, 1959, are not applicable. See P. L. 86-257, 73 Stat. 542 et seq., Section 707.

collective bargaining agent for the licensed engineers employed on Interlake vessels." (R. 26; see also R. 61, 62; Appendix 19, 20).

If these facts were true, then this conduct was not only "arguably subject to", not only "reasonably within", but clearly covered by the prohibition of Section 8(b)(2), which makes it an unfair labor practice for a "labor organization . . . to cause . . . an employer to discriminate against an employee in violation of subsection (a)(3)," which in turn makes it an unfair labor practice for an employer to encourage membership in any labor organization. See *Garner vs. Teamsters, supra*, where the picketing was found by the state trial court to have the same proscribed objective.

The trial court found as facts, and the Supreme Court adopted these findings, that:

"6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions."

* * * *

"9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the dock company employees have continued to refuse to unload the Samuel Mather." (R. 22, 23, 58, 59).

Again the findings of the state court place this conduct squarely within the prohibition of the federal statute. Section 8(b)(4) of the Act outlaws the secondary boycott, that

is, the inducement of the employees of a neutral employer, by picketing or otherwise to engage in a strike or to refuse to perform services where an object thereof is to force one person to cease doing busines with another. The state court's findings that employees of Carnegie Dock and Fuel Company, a neutral employer, were induced by the picketing not to perform services for Interlake indicates a violation of Section 8(b)(4). See *New York, New Haven and Hartford R. R. vs. Local 25, Teamsters*, 350 U. S. 155 (1956), where this Court found conduct to be within the scope of Section 8(b)(4) and reversed the assertion of jurisdiction by a state court.

The state courts were not totally unaware of the decisions of this Court and of the problem of preemption. The lower court refers to the *Garner* case on page 34 of the Record. The Minnesota Supreme Court conceded that in determining whether it had jurisdiction to enjoin the picketing it was "treading in a no-man's land where the boundaries are frequently obscure" (Appendix 18). But the state courts reasoned their way (untenably as it turned out) around the decisions of this Court on the ground that the congressional exclusion of supervisors from the coverage of the Act "left this field open to state regulation" (Appendix 18).

One thing the state courts did not take into consideration is that the decision as to whether a particular employee is or is not a supervisory employee should be made by the National Labor Relations Board. The state court went ahead and decided that the engineers of Interlake were supervisors. In effect it decided that if MEBA had filed a petition with the National Labor Relations Board for an election under Section 9(c) of the Act, the Board would not have acted because its jurisdiction does not cover supervisors. Regardless of the position of MEBA in the state court proceeding, this is obviously a decision which can be made only by the Board, either on a petition by MEBA or on a petition by the employer.[2] This is exactly

the kind of situation which cannot tolerate the chaos of a multiplicity of conflicting rulings. Federal policy does not permit, as this Court has said, the possibility of a conflict in interpretation between state and federal agencies.

But even this is not the critical problem. Picketing by supervisors may still constitute an unfair labor practice if the Board finds that the supervisors constitute a "labor organization" within the meaning of Section 8(b) of the Act, which proscribes unfair labor practices on the part of "a labor organization or its agents." This is a possibility that the Minnesota court did not even consider. It merely assumed that under these circumstances the National Labor Relations Board would decline to act.

Yet the Board has acted in similar situations involving MEBA and has assumed jurisdiction where a violation of Section 8(b)(4) was involved. In *MEBA vs. NLRB*, 274 F. 2d 167 (2d Cir. 1960), the Court of Appeals for the Second Circuit affirmed a Board finding that MEBA had violated Section 8(b)(4) of the Act by engaging in activity similar to that involved here. The Board necessarily found that MEBA was a "labor organization" within the meaning of the Act. The Court of Appeals affirmed this finding. See also *Schauffler vs. Local 101 Marine Engineers Beneficial Association*, 180 F. Supp. 932 (E. D. Pa. 1960) where the Board sought an injunction against conduct of MEBA alleged to violate Section 8(b)(4) of the Act.

The Board might have reached the same result under the instant facts. At the very least MEBA's conduct "is arguably subject to . . . Section 8 of the Act" within the meaning of *Garmon*, and the propriety of its conduct is a matter within the "exclusive competence" of the Board.

The existence of a direct conflict between the position of the Minnesota Supreme Court on the one hand and the Board and the Second Circuit on the other hand is clear. In *Plumbers, Steamfitters, et al., Local 298 AFL, et al. vs.*

---

[2] See *Graham Transportation Company and Brotherhood of Marine Engineers*, 124 NLRB 960 (1959), where the Board directed an election among marine engineers similar to those involved here.

County of Door, et al., 359 U. S. 354 (1959), this Court granted certiorari to resolve a similar conflict. It was said:

> "Since the N. L. R. B. had no power, the court ruled, state laws were not preempted and the injunction could stand. Under similar circumstances both the National Labor Relations Board and the United States Court of Appeals for the Third Circuit have concluded that the NLRB has jurisdiction. We granted certiorari to resolve this conflict. 358 U. S. 878." 359 U. S. at p. 356.

The *County of Door* case presented a comparable problem. There the state court determined that it had jurisdiction because a governmental body was involved. Here, the state court believed that supervisors were involved and accordingly that it had jurisdiction. In *County of Door* this Court reversed the state court and held that the Board had jurisdiction to determine whether an unfair labor practice existed. Here the picketing clearly falls within the scope of the federal statute and the determination of its propriety is for the Board and not for the state courts. The Board in the past has exercised its jurisdiction over MEBA and has been upheld by the Court of Appeals for the Second Circuit. *MEBA v. NLRB, supra.*

The exercise by the state court of jurisdiction over MEBA's picketing conflicts with federal regulation of that activity It involves a specific conflict between the power asserted by Congress and the existence of a state remedy. And even if the issue is not clearly established or settled, the state court must defer initially to the federal power.

Here the state court disregarded the express guidance of this Court in *San Diego Building Trades Council, et al. vs. Garmon, et al.*, 359 U. S. 236 (1959). There this Court said:

> "At times it has not been clear whether the particular activity regulated by the States was governed by §7 or

§8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left *in the first instance* to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board. See, e.g., *Garner v. Teamsters Union*, 346 U. S. 485, especially at 489-491; *Webster v. Anheuser-Busch, Inc.*, 348 U. S. 468." 359 U. S. at pp. 244, 245. (Emphasis supplied)

The Minnesota Supreme Court assumed the function of the National Labor Relations Board by deciding "in the first instance" that the Board would not assert jurisdiction. No opportunity was given to the Board to determine whether it would act, although it has acted in similar situations in the past. The state court usurped the Board's function by acting as the primary tribunal to adjudicate the scope and coverage of the federal statute. Its decision contravenes the principles expressly announced by this Court.

This case represents an attempt by the state court to circumvent the principles of federal preemption in the labor management field. The application of the federal statute to organizations such as MEBA raises unique and interesting problems. But these are problems which must be answered by the National Labor Relations Board and not by state courts. We respectfully submit that this case is particularly appropriate for the type of summary reversal which this Court has adopted in other cases involving a similar issue. See *Bogle vs. Jakes Foundry Co.*, 362 U. S. 401 (1960); *Machinists District Lodge 34 vs. L. P. Cavett*, 355 U. S. 39 (1957); *Teamsters, Chauffeurs, etc., Local Union No. 327 vs. Kerrigan*, 353 U. S. 968 (1957); *Building Trades Council, et al. vs. Kinard Con-*

struction Company, 346 U. S. 933 (1954). The decision of the state court clearly contravenes the principles of federal preemption and should be summarily reversed.

CONCLUSION

For all the foregoing reasons this petition for certiorari should be granted.

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APPENDIX "A"

No 9

St. Louis County

Knutson, *J.*
Took no part,
Otis, *J.*

Interlake Steamship Company and
Pickands-Mather & Company,

Respondents,

Endorsed
Filed March 30, 1961
Mae Sherman, Clerk
Minnesota Supreme Court

38110 vs.
Marine Engineers Beneficial
Association, et al.,

Appellants.

SYLLABUS

1. Exclusion of supervisory employees from Federal Labor Management Relations Act of 1947 left field open for state regulation, and state courts have jurisdiction, under proper facts, to enjoin labor organization from committing an act unlawful under state labor law.

2. In determining purpose of picketing in a labor case, a trial court may draw reasonable interferences from evidence the same as in any other field of litigation.

3. Where the purpose of picketing is to coerce or compel an employer to commit an unlawful act, the picketing itself becomes unlawful.

4. Minnesota Anti-Injunction Act, Minn. St. c. 185, does not prohibit the issuance of an injunction to restrain the commission of an unlawful act.

Affirmed.

OPINION

KNUTSON, Justice.

This is an appeal from an order of the district court granting a permanent injunction restraining defendants from picketing under the facts of this case.

Plaintiffs, Interlake Steamship Company and Pickands-Mather & Company, are the owners and operators of the second largest bulk cargo fleet of ships on the Great Lakes. For the most part, its ships transport bulk cargoes of coal and iron ore between Great Lakes ports in the United States and Canada.

Defendant Marine Engineers Beneficial Association, Local 101, referred to hereinafter as MEBA, is a voluntary unincorporated association which admits to membership licensed engineers employed on commercial vessels on the Great Lakes and the oceans.

Defendant Charles LaPorte is an agent and business representative of MEBA. His duties include the direction of the activities of MEBA in Duluth, Minnesota.

On November 11, 1959, Interlake's vessel, *Samuel Mather*, arrived at the dock of the Carnegie Dock & Fuel Company at Duluth, Minnesota, to unload a cargo of coal. The unloading of the vessel by the employees of Carnegie Dock & Fuel Company commenced shortly after the ship had docked. In the normal course of events the ship would have been unloaded in about 34 hours.

Early in the morning of November 12, 1959, five or six men began picketing the single private road entrance to the dock, walking in a tight circle across the road. Some of the men carried signs which read:

> "Pickands-Mather Unfair To Organized Labor This Dispute Only Involves Pickands-Mather M.E.B.A. Loc. 101 A.F.L.-C.I.O."

Others carried signs which read:

> "M.E.B.A. Loc. 101 AFL-CIO Requests P. M. Engineers To Join with Organized Labor to Better Work-

ing Conditions This Dispute Only Involves Pickands-Mather"

After the picketing of this road began, dockworkers employed by Carnegie Dock & Fuel Company refused to proceed with the unloading of the vessel. Later the same day, the District Court of St. Louis County issued a temporary restraining order prohibiting such picketing, but the dockworkers still refused to unload the cargo. As a further result of the picketing, certain independent truck-drivers refused to enter the premises and take delivery of coal for 2 hours.

Defendant Charles LaPorte, who identified himself on November 12, 1959, as business agent of MEBA, Local 101, stated that it was the intention of the union to picket all Pickands-Mather ships coming into the harbor.

On November 15, 1959, while the *Samuel Mather* remained partially unloaded at the dock, Interlake's vessel, *Pickands*, arrived in the Duluth harbor with another load of coal destined for unloading at the same dock. Since the dock could handle only one ship at a time, the *Pickands* had to remain anchored in the harbor for a number of days.

On the night of November 12, 1959, four or five pickets with signs identifying them with MEBA appeared at the entrance to the Duluth plant of the Interlake Iron Corporation and moved around continuously across the plant entrance. At that time there was no dispute between Interlake Iron Corporation and its employees, and none of its employees were on the picket line.

Each Interlake vessel has a chief engineer and three assistant engineers, all of whom are licensed by the coast guard. Plaintiffs' evidence sought to show that all Interlake engineers and assistant engineers are supervisory employees. Defendants introduced no evidence on this point but admitted that all of the engineers and assistant engineers abroad the *Mather* were supervisors.

Plaintiffs had no dispute of any kind with the employees on the Interlake fleet at the time of the picketing,

and prior to the picketing there had never been any negotiations between plaintiffs and defendants nor had defendants ever made any request of the plaintiffs for leave to board its ships. Interlake had an established policy to prohibit any unauthorized person from boarding its ships. Request had never been made of any Interlake official for permission to board such ships, but the right to do so was refused by the person who was on watch at the ship at the time in accordance with the rules of Interlake forbidding any unauthorized person to go aboard.

Plaintiffs' representatives and Interlake's chief executive officers knew of no MEBA members in the fleet. Defendants claim that it did have some such engineers as members but refused to disclose the names thereof. The trial court found that all of the engineers and assistant engineers employed on plaintiffs' vessels are supervisors within the meaning of the National Labor Relations Act.

Picketing which prevented the unloading of the vessels caused financial loss to plaintiffs amounting to about $6,000 per day, not including any profit.

A hearing was held on November 18, 1959, after which a temporary injunction was granted, and a permanent injunction was subsequently ordered on March 28, 1960.

It is the contention of defendants (1) that the state court lacks jurisdiction over the subject matter of the action; and (2) that if the state court does have jurisdiction the injunction should nevertheless have been denied.

1. Defendants first contend that the state court lacks jurisdiction to enjoin picketing for organizational or recognition purposes but that such jurisdiction rests exclusively with the National Labor Relations Board. To support this contention, they rely on Norris Grain Co. v. Seafarers' International Union, 232 Minn. 91, 46 N. W. (2d) 94, and Faribault Daily News, Inc. v. International Typog. Union, 236 Minn. 303, 53 N. W. (2d) 36; Annotation, 32 A. L. R. (2d) 1026.

Under the original Federal Labor Management Relations Act of 1935 the contention of defendants no doubt would be sound. Packard Motor Car Co. v. National Labor Relations Board, 330 U. S. 485, 67 S. Ct. 789, 91 L. ed. 1040. The Federal act, however, was amended in 1947 by the so-called Taft-Hartley Act, and the amendments brought about at that time are of great importance in this case. As so amended, the law found in 29 USCA, §152(3), 61 Stat. 137, and, as far as pertinent here, reads:

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, . . . *but shall not include . . . any individual employed as a supervisor. . . .*" (Italics supplied.)

29 USCA, §152(11), 61 Stat. 138, reads:

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

29 USCA §164(a), 61 Stat. 151, reads:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

29 USCA, §157, 61 Stat. 140, defines the right of employees to organize and reads:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

The trial court found that the engineers employed by plaintiffs were supervisors within the meaning of the above Federal provisions. That finding has ample support in the record and is not, we believe, seriously disputed by defendants.

Defendants argue, however, that it has now been determined in National Marine Engineers Beneficial Assn. v. National Labor Relations Board (2 Cir.) 274 F. (2d) 167, that MEBA is a labor organization subject to the secondary boycott provisions of the Federal act and that, inasmuch as the complaint in this case alleges a violation of the secondary boycott provisions of both state and Federal laws, it follows that the National Labor Relations Board has exclusive jurisdiction under our decision in Norris Grain Co. v. Seafarers' International Union, *supra*. This contention is untenable for at least two reasons. In the first place, the Federal court did not hold that MEBA is a labor organization under the evidence in this case. Decision in that case was based squarely on the facts there involved. To make this clear, the court said (274 F. [2d] 175):

> ". . . The Board [National Labor Relations Board] could properly have thought that the matters placed in the record by the general counsel justified an inference that non-supervisors do participate in

MEBA and MMP, and that this sufficed for the Board's finding to that effect unless they were rebutted by more convincing evidence than the unions offered here. We therefore cannot say the Board's finding that MEBA and MMP were labor organizations did not meet the standards laid down in Universal Camera Corp. v. N. L. R. B., 1951, 340 U. S. 474, 71 S. Ct. 456, 95 L. Ed. 456. *We are not saying that MEBA* and MMP *are or are not in fact 'labor organizations' within the meaning of §8(b) today. We say only that we cannot hold, on the evidence in this record, that the Board was unjustified in finding that they were in April, 1957.* We do not look with favor on the practice of determining such an issue by the citation of previous Board proceedings rather than by an investigation of the facts." (Italics supplied.)

Secondly, Norris Grain Co. v. Seafarers' International Union, *supra*, had nothing to do with supervisory employees who are expressly excluded by the Taft-Hartley amendment to the Federal labor act.

We fully realize that in determining whether a state court has jurisdiction over any phase of labor relations involving interstate commerce we are treading in a no man's land where the boundaries are frequently obscure,[1] but it seems to us that, when Congress expressly excluded supervisory employees from the Federal act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees, it left this field open to state regulation.[2] Any other conclusion would lead to the result that labor practices in this area would be subject to no regula-

[1] See, Labor Relations Law, 1959 Annual Survey of American Law, New York University School of Law, p. 145.

[2] See, McLean Distributing Co. Inc. v. Brewery & Beverage Drivers, 254 Minn. 204, 94 N. W. (2d) 514, certiorari denied, 360 U. S. 917, 79 S. Ct. 1436, 3 L. ed. (2d) 1534.

tion at all. We are convinced that here the state court had jurisdiction. The same result was reached by the California court in Safeway Stores, Inc. v. Retail Clerks International Assn. 41 Cal. (2d) 567, 261 P. (2d) 721, and In re Kelleher, 40 Cal. (2d) 424, 254 P. (2d) 572; and by the New York court in 260 Madison Avenue Corp. v. Nelson, 284 App. Div. 254, 131 N. Y. S. (2d) 426.

2. We then come to the more difficult question as to whether plaintiffs were entitled to an injunction under our state law. Crucial to a determination of this question are the following findings of the court:

> "15. The . . . purpose and objective of the picketing and activities of MEBA Local 101, hereinabove described is to secure from plaintiffs the same type of agreement or understanding which it has obtained from other employers operating bulk cargo vessels on the Great Lakes. Every agreement or understanding between said defendant and other Great Lakes vessel companies includes a provision requiring every licensed engineer hired after a specified date to become a member of said defendant organization within thirty days from the date of his employment as a condition of continued employment.
>
> "16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.
>
> "17. The further purpose and objective of defendants' picketing and activities as described above was to coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local

101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels."

It is the contention of defendants that these findings are not supported by the evidence; that the only purpose of picketing was to obtain leave to board plaintiffs' vessels so that agents of MEBA could talk to the engineers and attempt to induce them to become members of the union; and that a further purpose was to procure an election to be conducted by some impartial group to ascertain whether the engineers wished to have MEBA represent them as collective bargaining agents. It is conceded by all that the National Labor Relations Board would not conduct such election.

The stipulation of defendants' counsel as to the purpose of the picketing is somewhat revealing. He said:

> "The Marine Engineers Beneficial Association is prepared to stipulate . . . that the purpose of picketing . . . the plaintiff in this case—was to improve the wages, hours and working conditions of the licensed engineers of the plaintiff company as well as the wages, hours and working conditions of the licensed engineers of other companies on the Great Lakes and on the high seas; and that, more specifically, its purpose was to secure—well strike that. And that in furtherance of this policy that its purpose was to obtain from the defendant the type of agreement or understanding that it has obtained from other companies on the Great Lakes under similar circumstances; the type of understanding that has been obtained elsewhere, and that the defendant Marine Engineers Beneficial Association would feel appropriate in this case and would feel would serve the purpose of improving the wages, hours and working conditions of the engineers which is, number 1: That representatives of the Marine Engineers Beneficial Association be given permission to go aboard the vessels . . . of

> the plaintiff . . . at such reasonable times and places as may be agreed to between the parties, and secondly: to secure an understanding from the company that on request from the Marine Engineers Beneficial Association, within such reasonable time as may be established by the parties and on such a showing as may be agreed to by the parties, that the plaintiff would agree that an election could be held among the licensed engineers of the company for the purpose of determining whether or not the employees voluntarily and freely, of their own will, in a secret ballot desire to be represented by this association with the understanding being, of course, that if such an election is held and if the employees indicate that they do not desire to be represented by the Marine Engineers Beneficial Association that no further efforts would be made in this action for such reasonable period of time as might be agreed to between the parties."

The signs carried by the pickets also are significant in establishing the ultimate objective of the picketing.

The record discloses, without dispute, that the type of contract which MEBA desired to obtain contained a union security clause requiring all engineers at some time in the future to become members of the union.

In determining what the ultimate purpose of the picketing was, the court was justified in drawing reasonable inferences from the evidence. After all, courts need not be oblivious to facts which are apparent to all others. Here, no dispute existed between plaintiffs and their employees. None of plaintiffs' employees took part in the picketing, but the pickets were entirely agents of MEBA, some of whom came from places far removed from the scene of the activity. It is conceded that MEBA did not represent such employees although it is claimed that a few of the engineers did belong to MEBA. No request had been made of anyone having authority to grant it on

behalf of plaintiffs for leave to board its ships or to have an election, which defendants claim was the sole purpose of the picketing. The pickets simply appeared on the scene like ghosts in the night and effectively and immediately tied up the unloading of plaintiffs' ships due to the fact that the employees of Carnegie Dock & Fuel Company refused to work on the ships as long as the pickets remained there. It is apparent that the ultimate object of MEBA was to procure a contract having a union security clause in it which would require engineers in the future to become members of the union. We think that the court had ample justification in finding, as it did, that the purpose of the picketing was to coerce or compel plaintiffs to accept a contract having in it a union security clause.

3. Under the Minnesota Labor Relations Act, supervisors are not excluded as they are under the Federal act, although Minn. St. 179.16 places them in a separate category in that they cannot vote in the selection of a bargaining agent.

Section 179.10 contains a declaration of public policy adopted by our legislature with respect to rights of employees. Subd. 1 thereof reads:

> "Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities."

In 1947, our legislature added §179.42, which reads:

> "It is an unlawful act and an unfair labor practice for any person or organization to combine with another, to cause loss or injury to an employer, to refuse to handle or work on particular goods or equipment or perform services for an employer, or to withhold patronage, or to induce, or to attempt to induce,

another to withhold patronage or other business intercourse, for the purpose of inducing or coercing such employer to persuade or otherwise encourage or discourage his employees to join or to refrain from joining any labor union or organization or for the purpose of coercing such employer's employees to join or refrain from joining any labor union or organization."

Section 179.12, as far as here material, reads:

"It shall be an unfair labor practice for an employer:

* * * *

"(3) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; provided, that this clause shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employees or a labor organization representing the employees as a bargaining agent, as provided by section 179.16."

Thus, under §179.12(3), it is an unfair labor practice for employers to enter into agreements containing union security clauses unless such provisions are contained in agreements entered into voluntarily by an employer and his employees or a labor-organization representative as a collective bargaining agent as provided by §179.16.

In the Dayton Co. v. Carpet, Linoleum, etc., Union, 229 Minn. 87, 39 N. W. (2d) 183, appeal dismissed, 339 U. S. 906, 70 S. Ct. 570, 94 L. ed. 1334, we held that it was an unlawful practice for an employer to coerce employees into belonging to a union unless done in accordance with §179.12. We held that this section relates solely to unfair labor practices by employers. We left open the question of whether or not acts done by a labor organization seeking to compel an employer to violate §179.12(3) may also be

enjoined. Inasmuch as we now uphold the trial court's finding that the picketing in this case was conducted for the purpose of coercing the employer to enter into a contract containing a union security clause contrary to §179.12(3), the question we left open in The Dayton Company case is squarely before us. To hold that for an employer to coerce or compel his employees to become members of a union against their will is an unfair labor practice which may be enjoined but that a union is free to bring economic pressure on such employer to do that which the law prohibits him from doing would place an employer in an unenviable position indeed. He could then refuse compliance with the union's demands, as the law would require him to do, and suffer a possible destruction of his business or, at the very least, serious economic loss, or he could comply with the union's demands and be held guilty of having committed an unfair labor practice under the law. In this sensitive area of balancing rights of labor and management in the field of labor relations, we do not believe that we need give the statutes of this state a construction which will lead to such an unfair and absurd result.

Many of the arguments advanced here were considered by the Indiana court in Roth v. Local Union No. 1460 of Retail Clerks Union, 216 Ind. 363, 24 N. E. (2d) 280. Indiana has an anti-injunction statute quite similar to our c. 185. The Indiana statute contains a declaration of public policy quite similar to that found in our statutes. In holding that picketing by a union to compel an employer to enter into a closed-shop agreement could be enjoined, the Indiana court said (216 Ind. 370, 24 N. E. [2d] 282):

> ". . . The statute here under consideration declares that it is the public policy of this state that the individual unorganized worker shall be free to decline to associate with his fellows and that he shall be free from interference, restraint, or coercion on the part of his employer. This must mean that no labor union may demand that an employer require his employee to join

such union, because no employer has the right to require an employee to join or refrain from joining a labor union. *Any person or group which undertakes to coerce an employer to do that which is contrary to the express public policy of this state thereby undertakes to compel the performance of an unlawful act. The lawful weapon of peaceful picketing may not be utilized to accomplish such an unlawful purpose.* It is quite immaterial that the things done to bring about the unlawful purpose were not *per se* unlawful." (Italics supplied.)

In Gazzam v. Building Service etc. Union, 29 Wash. (2d) 488, 500, 188 P. (2d) 97, 103, 11 A. L. R. (2d) 1230, 1337,[3] the Washington court, following the Indiana court, said:

"We hold that the acts of respondents, in so far as the picketing was concerned, were coercive—first, because they violated the provisions of Rem. Rev. Stat. (Sup.) §7612-2, and, second, because they were in violation of the rules of common law as announced in the cases just approved."

On appeal to the United States Supreme Court, Building Service etc. Union v. Gazzam, 339 U. S. 532, 538, 70 S. Ct. 784, 788, 94 L. ed. 1045, 1051, the court said:

". . . Picketing of an employer to compel him to coerce his employees' choice of a bargaining representative is an attempt to induce a transgression of this policy, and the State here restrained the advocates of such transgression from further action with like aim. To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in

[3] For the second decision in this case, see Id. 34 Wash. (2d) 38, 207 P. (2d) 699, affirmed, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045.

reliance on the policy is an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment."

Maine also has a statute quite similar to ours. In Pappas v. Stacey, 151 Me. 36, 41, 116 A. (2d) 497, 499, appeal dismissed, 350 U. S. 870, 76 S. Ct. 117, 100 L. ed. 770, the Maine court said:

> "Under the statute enacted in P. L., 1941, c. 292, *supra*, the employee, or worker, is protected from 'interference, restraint or coercion by their employers or other persons. . . .' The worker must be left free from interference by employer or other persons in reaching a decision whether to join or refrain from joining a union. It follows necessarily that pressure cannot lawfully be directed against the employer to force him to interfere with the free choice of his employees. The plaintiff cannot lawfully be placed in a position where compliance with the strikers' demands requires action in violation of the law of the State."

International Brotherhood of Teamsters v. Vogt, Inc. 354 U. S. 284, 77 S. Ct. 1166, 1 L. ed. (2d) 1347, contains a comprehensive review of the decisions of the United States Supreme Court on this subject. The United States Supreme Court affirmed a decision of the Wisconsin court, Vogt, Inc. v. International Brotherhood of Teamsters, 270 Wis. 315, 321 g, 74 N. W. (2d) 749, 753, where the Wisconsin court said:

> ". . . Picketing may be more than free speech. When it is conducted, as it was in this instance, upon a rural highway at the entrance to a gravel pit where an exceedingly small number of possible or probable Patrons of the owner's business might pass and be influenced by the union's banner, it is more than the mere exercise of the right of free communication. One

> would be credulous, indeed, to believe under the circumstances that the union had no thought of coercing the employer to interfere with its employees in their right to join or refuse to join the defendant union. We have not the slightest doubt that it was the hope of the union that the presence of pickets at plaintiff's place of business would interfere with its operation and deprive it of delivery service, thus bringing pressure upon it to coerce its employees to join the union."

In affirming the decision of the Wisconsin court, the United States Supreme Court said (354 U. S. 294, 77 S. Ct. 1171, 1 L. ed. [2d] 1354):

> "The Stacey case [Pappas v. Stacey, *supra*] is this case. . . . As in Stacey, the highest state court drew the inference from the facts that the picketing was to coerce the employer to put pressure on his employees to join the union, in violation of the declared policy of the State. (For a declaration of similar congressional policy, see §8 of the National Labor Relations Act, 61 Stat. 140, 29 U. S. C. §158.) The cases discussed above all hold that, consistent with the Fourteenth Amendment, a State may enjoin such conduct."

Many other cases could be discussed, but we think that it is now evident that picketing, even though peacefully conducted, may go beyond the legitimate exercise of the right of free speech; that when its ultimate purpose is to coerce or compel an employer to commit an unlawful act the picketing itself becomes unlawful and may be enjoined; and that in finding what is the purpose of picketing the court may look through a veil of legitimacy and determine what the picketing is intended to accomplish. In so doing, the trial court is permitted to draw reasonable inferences from the evidence the same as in any other field of litigation, and, when findings are based on inferences so drawn, they must stand if there is reasonable support for them in

the record. Here, the court's finding that the purpose of the picketing was to compel or coerce the employer into committing an unfair labor practice under our law finds ample support in the record. That being true, the picketing itself becomes unlawful.

4. There remains then only the question of whether the injunction is prohibited by our Minnesota Anti-Injunction Act, Minn. St. c. 185. The public policy of this state is declared in §185.08, and in the application of the so-called Anti-Injunction Act the legislature has specifically stated that interpretation should be based upon such public policy. As so declared, it reads as far as material here:

> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the state, are hereby enacted."

Obviously, the act was passed for the purpose of protecting the right of employees to have freedom of choice in

the selection of their bargaining agent and was not intended for the purpose of permitting the commission of unlawful acts. We do not believe that the act here enjoined comes within the category of those things which are protected by the act. See, for instance, the acts specified in §185.10.

We have considered all other contentions of the parties, as well as authorities cited, but see no need of further extending this opinion. We are convinced that the trial court properly enjoined the conduct complained of.

Affirmed.

/s/ OSCAR R. KNUTSON

MR. JUSTICE OTIS, not having been a member of the court at the time of the argument and submission, took no part in the consideration or decision of this case.

APPENDIX "B"

STATUTORY PROVISIONS INVOLVED

The following are sections of the Labor Management Relations Act of 1947:

DEFINITIONS

"Sec. 2. When used in this Act—

(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. . . .

(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

UNFAIR LABOR PRACTICES

"Sec. 8(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer

from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9(f), (g), (h), and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . .".